



California Fair Political Practices Commission

December 12, 1985

Thomas J. Ward
City Attorney
City of Lancaster
44933 North Fern Avenue
Lancaster, CA 93534

Re: Your Request for Advice
Our File No. A-85-232

Dear Mr. Ward:

Thank you for your letter requesting advice on behalf of the City Manager of the City of Lancaster, James C. Gilley, concerning his duties under the conflict of interest provisions of the Political Reform Act.^{1/}

FACTS

In your letter you provided the following facts:

In December, 1983, a limited partnership was formed wherein the City Manager was the sole general partner and the limited partners consisted of Assistant City Manager, Planning Director, City Engineer, financial consultant and Redevelopment Agency attorney. The general partner (City Manager) received 10% interest in the limited partnership in exchange for his services as a general partner. The balance of ownership interest in the limited partnership was divided among the limited partners in equal amounts. The limited partnership's purpose was the purchase of property in the City of Palmdale and the exact location of the property is approximately 7 miles outside of the City of Lancaster boundaries.

^{1/} Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated.

The limited partnership agreement vests management authority in the general partner and allows the general partner to hire anyone he wishes to manage the property at a fee not to exceed 5% of rental income. The general partner and spouse currently act as the manager and receive approximately \$150 per month.

From time to time, the City Manager must make recommendations and evaluations of the Assistant Manager and Planning Director, in his capacity as City Manager. The City Engineer works for an independent engineering firm with whom the City contracts for engineering and building and safety services. The City Manager, from time to time, may be required to make recommendations concerning this contract. The City Manager also, from time to time, may be required to make recommendations in his capacity as city Manager or in his capacity as Executive Director of the City's Redevelopment Agency, concerning the financial consultant and Redevelopment Agency attorney. The City's relationship with the engineering firm, the financial consultant and Agency attorney all pre-date the formation of the limited partnership and the hiring of the City Manager.

In January, 1985, a second limited partnership was formed for the specific purpose of purchasing property in an area of Los Angeles County known as Quartz Hill, which is adjacent to City boundaries. The property is located within 2 miles of the City boundaries. The limited partnership is composed of all of the same investors in slightly varying percentages of interest. The City Manager again received 10% in exchange for his services as a general partner, but in addition, paid in cash for an additional 11.25%. The arrangement regarding the management fee is the same except in this case the City Manager and his spouse receive approximately \$250 per month from the rents.

Pursuant to each limited partnership agreement, there is no ability to require additional capital contributions from the limited partners except for pro rata payments on the mortgage owing on each property in the instance that the partnership has insufficient funds to otherwise make the payment. The City Manager, as well as the limited partners, all filed appropriate statements of economic interest disclosing the interest.

QUESTION

Mr. Gilley is a general partner in two limited partnerships described above. The purpose of each limited partnership is limited to the ownership of specific improved real property located outside of the City limits.

Are any of the limited partners a source of income to Mr. Gilley so as to prevent him from participating as City Manager in any decisions relating to or affecting the limited partners under the Political Reform Act?

CONCLUSION

The limited partners' initial investment in the limited partnership makes each limited partner a source of income to Mr. Gilley for 12 months following the time the investment occurs. Therefore, for 12 months after a limited partner makes his or her investment in the limited partnership, Mr. Gilley must disqualify himself from participating in decisions which would have a reasonably foreseeable material financial effect on that limited partner.

ANALYSIS

Section 87100 prohibits a public official from making, participating in, or attempting to use his official position to influence a governmental decision in which he has a financial interest. A public official has a financial interest in a decision if the decision would have a reasonably foreseeable material financial effect on the official or his or her immediate family, or on, among other interests, any source of income aggregating two hundred fifty dollars or more in value provided to, received by or promised to the public official within 12 months prior to the time when the decision is made. Section 87103(c).

Therefore, if any of the limited partners in the limited partnerships in question is considered a source of income of \$250 or more to Mr. Gilley, during the 12 months preceding a decision affecting that limited partner, Mr. Gilley would be required to disqualify himself from participating in the decision if it would have a reasonably foreseeable material financial effect on the limited partner.

In the Nord Opinion, 8 FPPC Opinions 6 (No. 83-004, October 4, 1983), the Commission ruled that limited partners have an investment interest in the controlling general partner of the limited partnership. The Commission also noted that, as

a result of the investment in the limited partnership, the limited partners may be considered sources of income to the general partner. Nord, supra, at p.8, fn. 16.

In our opinion, in a situation such as this, when a limited partnership is formed and the general partner receives an ownership interest in the partnership in exchange for his services as general partner, that ownership interest is income to the general partner.^{2/} In that situation each limited partner has contributed to the income received by the general partner. Accordingly, each limited partner is a source of income to the general partner, based on the limited partner's percentage contribution to the general partner's interest in the partnership. For example, if four limited partners each contribute \$10,000 to a limited partnership in exchange for a 20 percent interest, and the general partner also receives a 20 percent interest in exchange for his services, each limited partner would have provided the general partner with income of \$2,500, or one-fourth of the general partner's 20 percent interest in the limited partnership.^{3/}

In Mr. Gilley's situation, each limited partner in the two limited partnerships has provided income to him. One limited partnership was formed in December 1983. In that case, the limited partners' initial investment occurred more than one year ago, and the income Mr. Gilley received from the formation of that limited partnership would not be the basis for a conflict of interest.

The other limited partnership was formed in January 1985 and Mr. Gilley received a 10-percent interest in exchange for his services as general partner. For 12 months after the formation of the limited partnership, Mr. Gilley must disqualify himself from participating in decisions which would

2/ "Income" is broadly defined for purposes of the Political Reform Act. See Section 82030(a) (definition of "income") and Section 82044 (definition of "payment").

3/ If the limited partners make additional contributions to the limited partnership after the initial investment, thereby increasing the value of the general partner's interest, the limited partners would again be sources of income to the general partner. The general partner would be required to disqualify himself from decisions which could affect the individual limited partners for a 12-month period following the time of the additional investment.

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have a reasonably foreseeable material financial effect on any limited partner who contributed \$250 or more toward Mr. Gilley's 10 percent interest. The 12-month period will end in January 1986.

In your letter, you described various decisions which could affect the individual limited partners in the second limited partnership. You did not indicate whether any of these decisions is now pending, nor did you provide specific information about the effects of any of the decisions on the individual limited partners. However, based on the facts you have provided, if Mr. Gilley is required to disqualify himself from any decisions affecting the limited partners, his duty to disqualify himself will continue for only a few more weeks. I am enclosing copies of Commission regulations 2 Cal. Adm. Code Sections 18702(b)(3)(D) and 18702.1(a) which provide guidance for determining whether the effect of a decision on an individual who is a source of income will be considered material. Please contact me if you have any question about the application of these regulations to a specific fact situation.

With regard to the monthly income Mr. Gilley and his spouse receive for managing the properties owned by the limited partnerships, we conclude that the sources of that income are the limited partnerships, rather than the individual limited partners. Therefore, that income would not provide the basis for a conflict of interest when Mr. Gilley is faced with a decision affecting one of the limited partners.

If you have any further questions regarding this matter, please contact me at (916) 322-5901.

Very truly yours,

Kathryn E. Donovan
Counsel
Legal Division

KED:plh
Enclosure

City of Lancaster

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Lancaster, California 93534
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November 5, 1985

Executive Director
Fair Political Practice Commission
P. O. Box 807
Sacramento, CA 95804

Lynn S. Harrison
Mayor

Jack Murphy
Vice Mayor

Louis V. Bozigian
Councilman

Fred M. Hann
Councilman

Barbara Little
Councilwoman

James C. Gilley
City Manager

Dear Executive Director:

This request is being submitted to you in my roll as City Attorney for the City of Lancaster, California. The City Council, at a meeting on October 15, 1985, has requested that I seek written advice concerning a limited partnership agreement entered into by the City Manager of the City of Lancaster, James C. Gilley, wherein Mr. Gilley acts as a general partner, and the limited partners consist of the City Planning Director, Assistant City Manager, City Engineer, redevelopment and financial planning consultant for the City and Agency (financial consultant) and the Redevelopment Agency attorney.

FACTS

In December, 1983, a limited partnership was formed wherein the City Manager was the sole general partner and the limited partners consisted of Assistant City Manager, Planning Director, City Engineer, financial consultant and Redevelopment Agency attorney. The general partner (City Manager) received 10% interest in the limited partnership in exchange for his services as a general partner. The balance of ownership interest in the limited partnership was divided among the limited partners in equal amounts. The limited partnership's purpose was the purchase of property in the City of Palmdale and the exact location of the property is approximately 7 miles outside of the City of Lancaster boundaries. The limited partnership agreement vests management authority in the general partner and allows the general partner to hire anyone he wishes to manage the property at a fee not to exceed 5% of rental income. The general partner and spouse currently act as the manager and receive approximately \$150 per month.

From time to time, the City Manager must make recommendations and evaluations of the Assistant Manager and Planning Director, in his capacity as City Manager. The City Engineer works for an independent

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engineering firm with whom the City contracts for engineering and building and safety services. The City Manager, from time to time, may be required to make recommendations concerning this contract. The City Manager also, from time to time, may be required to make recommendations in his capacity as City Manager or in his capacity as Executive Director of the City's Redevelopment Agency, concerning the financial consultant and Redevelopment Agency attorney. The City's relationship with the engineering firm, the financial consultant and Agency attorney all pre-date the formation of the limited partnership and the hiring of the City Manager.

In January, 1985, a second limited partnership was formed for the specific purpose of purchasing property in an area of Los Angeles County known as Quartz Hill, which is adjacent to City boundaries. This property is located within 2 miles of the City boundaries. The limited partnership is composed of all of the same investors in slightly varying percentages of interest. The City Manager again received 10% in exchange for his services as a general partner, but in addition, paid in cash for an additional 11.25%. The arrangement regarding the management fee is the same except in this case the City Manager and his spouse receive approximately \$350 per month from the rents.

Pursuant to each limited partnership agreement, there is no ability to require additional capital contributions from the limited partners except for prorata payments on the mortgage owing on each property in the instance that the partnership has insufficient funds to otherwise make the payment. The City Manager, as well as the limited partners, all filed appropriate statements of economic interest disclosing the interest.

QUESTION PRESENTED:

Mr. Gilley is a general partner in two limited partnerships wherein the limited partners are various City employees and department heads, as well as a financial consultant and Redevelopment Agency attorney. The purpose of each limited partnership is limited to the ownership of specific improved real property located outside of the City limits.

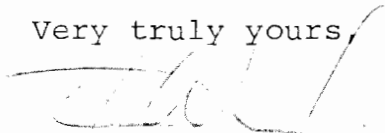
Do any of the limited partners become a source of income so as to prevent the City Manager from participating in any decisions relating to or affecting the limited partners under the Political Reform Act?

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The foregoing represents a full disclosure of all pertinent factors involved. If further information is needed, please do not hesitate to contact me at my office located at 44919 No. Elm Avenue, Lancaster, CA 93534 or (805) 948-5021.

Very truly yours,



THOMAS J. WARD
City Attorney
City of Lancaster

TJW:jl